



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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MEMORANDUM

JUN 17 1983 JUN 17 1983

SUBJECT: Interim Guidance for the Overview of the UIC Program

FROM: Victor J. Kimm, Director
Office of Drinking Water (WH-550)

TO: Water Division Directors
Water Supply Branch Chiefs
Regions I - X

Attached is a copy of the interim overview guidance for the UIC program. This guidance will be expanded, if warranted, and will be incorporated into any subsequent Office of Water guidance. If you need any clarification, please contact:

Jentai Yang, Ph. D., PE, Chief,
State Programs Implementation Section
Ground Water Protection Branch, WH-550
U.S. EPA
401 M Street, SW
Washington, D.C. 20460

Phone: FTS or (202) 382-5562

Attachment

cc UIC Representatives Region I-X
Jane Ephremides



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 19 1985

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Revisions to (GWPB #30) Interim Guidance for Overview
of the Underground Injection Control (UIC) Program

FROM: Thomas E. Belk, Chief *Thomas E. Belk*
Underground Injection Control Branch (WH-550)
Co Chairman of Compliance Strategy Work Group

Donald Olson, Chief *Donald Olson*
Drinking Water and Special Enforcement Section (EN 338)
Co Chairman of Compliance Strategy Work Group

TO: Water Supply Branch Chiefs
Regions I-X

Compliance Strategy Workgroup

Attached is a Draft copy of the revised overview guidance for your review and comment. I am E-Mailing this today so that we can discuss informally during the meeting of 2/26 - 2/28. Please prepare your written comments and mail them to me by 3/8/85.

The approved version of the Compliance Strategy for Direct Implementation Jurisdictions was mailed to you on 2/14/85.

Attachment

DRAFT

FEB 19 1985

Revised Guidance for Overview of the Underground Injection Control (UIC) Program

Purpose

This document outlines procedures and criteria for effective overview of the UIC Program. These procedures and criteria may be used by EPA Regional offices (ROs) as they oversee State programs or by EPA Headquarters for overview of Regional office programs in nonprimacy States and on Indian lands. Implementation of this guidance will provide EPA with enough information to assess the effectiveness of the UIC program and to provide the Congress and the Office of Management and Budget with quantitative and qualitative information for planning and evaluation purposes. This guidance will be expanded when warranted, and will be incorporated into the next Office of Water guidance. This guidance follows the Office of Water overview criteria and the Administrator's delegation policy documents.

In conducting overview activities EPA will utilize existing information and required reporting to the greatest extent possible in order to minimize disruption and additional burden on the States and the regulated community. It is important that the planning for overview be integrated into the yearly changes and development processes for the Memorandum of Agreement (MOA). Also note that this guidance references and briefly describes several reporting requirements which were outlined in Victor Kimm's July 13, 1983 memorandum on UIC reporting. They have been mentioned here in order to provide the "total picture" of overview activities and elements.

Background

The Safe Drinking Water Act (the Act) requires that a State provide the Environmental Protection Agency (EPA) with reports on its UIC program. The minimum requirements for an effective State UIC program are given in section 1421 of the Act. Section 1421(b)(1)(C) requires that a State program include inspection, monitoring, recordkeeping, and reporting requirements. As a follow-up to this, under "State Primary Enforcement Responsibility," section 1422(b)(1)(A)(ii) requires that the State show in its program application that it:

" . . . will keep such records and make such reports with respect to its activities under its Underground Injection Control program as the Administrator may require by regulation."

With this statutory basis for reporting, EPA established specific requirements in the program regulations. An optional demonstration of an effective UIC program is provided for Class II (oil and gas related) injection wells under section 1425 of the Act. This allows the State program, in lieu of meeting section 1422(b)(1)(A) parameters, to meet the following alternative in section 1425(a)(2):

" . . . the State may demonstrate that such portion of the State program meets the requirements of subparagraphs (A) through (C) of section 1421(b)(1) and represents an effective program (including adequate recordkeeping and reporting)"

Although no regulations have been promulgated for section 1425 programs, interim final guidance (46 FR 27333), paragraph 3.7(e), notes that in the MOA the State should agree to provide EPA with an annual report on the operation of its program, and paragraph 6.3 describes the minimum content of the annual report.

The State's specific reporting requirements and EPA's procedures, as established by regulations and guidance, are considered below.

I. Grant regulations - 40 CFR Part 35

These regulations were amended and published October 12, 1982 (47 FR 44946). Section 35.125 directs the national program manager to issue guidance specifying, among other things, the program elements and other tracking criteria which the Regional office should negotiate with each individual State. Guidance for the management of UIC grants is being developed and will be issued separately. The information on these elements is acquired to report to Congress and OMB on the status of the program and to justify budget requests. This is discussed in the preamble to 40 CFR Part 35 (47 FR 44949).

The evaluation of recipient performance is covered under 40 CFR §35.150. The recipient and the Regional office staff will negotiate a schedule for evaluation of the recipient's performance. The Regional Administrator will include this in the grant agreement.

II. Required State reports -

As mentioned above, EPA, in its evaluation of State programs, will use information contained in required State reports. These reports are:

- A. Annual program reports (40 CFR §144.8(b) and 1425 Guidance §6.3). Guidance in Victor Kimm's July 13, 1983 memorandum;
- B. Financial Status reports and Property reports (40 CFR §30.505) in annual UIC grant Guidance;
- C. Quarterly noncompliance reports (for major permits) 40 CFR Section 144.8(a);
- D. Annual noncompliance reports (for nonmajor permits) (40 CFR Section 144.8(b)).

Guidance

Five elements comprise the UIC overview system: Annual (Federal) reporting, grant reporting, noncompliance reporting, monitoring of State activities, and program evaluations. While this guidance focuses on monitoring and program evaluations, the three areas of reporting are also discussed below in order to provide a total overview picture.

I. Annual (Federal) reporting

The annual program report is due 60 days following the close of the calendar year. This report summarizes UIC activities which took place in the State during the year. By aggregating annual report data from all States (and EPA-run programs), EPA will be able to calculate and document the nationwide level of activity in the UIC program (number of permits issued, etc.). The injection well inventory update is also considered a part of the annual report. The annual program report contains a narrative description of program developments and accomplishments along with a tabulation of activities in the following areas:

- A. Part I - Permit Review and Issuance and Wells in the Area of Review
- B. Part II - Compliance Evaluation
- C. Part III - Mechanical Integrity of Existing Wells

This information will be used to establish a tracking and evaluation system for the program.

The annual program report should also address problems encountered during the year and any program changes necessary to resolve them. Detailed guidance and forms for annual program reports were finalized with Victor Kimm's July 13, 1983 memorandum, entitled "Annual Federal Reporting Requirements - Underground Injection Control (UIC) Program".

II. Grant reporting

Financial reporting for UIC grants and direct implementation funding is outlined in UIC Grant Management Guidance which is being issued separately. Regional offices will provide Headquarters with object class and program element budget information from State grants at the time of grant award, subsequent increases, and again following the close of the budget period. States will submit financial status reports as required by 40 CFR Section 30.505.

III. Noncompliance reporting

Noncompliance reports, required by 40 CFR Sections 144.8(a)(1) and 144.8(b), are to be prepared quarterly for "major" facilities and annually for all other facilities. EPA has defined "major UIC facilities" in GWPG #18 as Class I and Class IV wells; however, some States have used different criteria in their rules and expanded their definition to include other types of injection wells. Non-compliance reporting for non-majors is done annually and is included as part of the annual (federal) report.

IV. Monitoring of State Activities

EPA and primacy States interact on a frequent (sometimes daily) basis. The RO should designate a person ("program manager" or "project officer") who has lead responsibility for oversight of each primacy State. Depending on the availability of resources and the level of injection activity in the State, a "program manager" may be assigned for each State or may be responsible for more than one State.

The "program manager" and other RO staff should maintain frequent contact with State UIC staff through telephone calls and visits to the State offices. Contacts will range from information gathering to offering advice and technical assistance. In a State with much injection activity, the "program manager" should visit the State as often as possible (once a month, if resources are available). RO staff should perform the following types of activities during the course of the year to gain a thorough insight into the quality of the State program:

A. File Reviews

The RO may utilize after-the-fact review of the State's files to assess permitting, compliance and enforcement performance. This review may be done in "random" fashion, or the RO may want to concentrate on permits or actions in a certain geographical area, or geologic formation, or on a certain well type. As a general rule, the RO should review 10 percent of the permits issued/actions taken, or should review 10 actions/permits per year, whichever number is more. The RO should make an effort to ensure that the sample is representative. However, the RO should negotiate with the State the appropriate number of reviews for each State program. The RO may also "spot check" self reporting by injection well operators to determine a) the degree of compliance with reporting requirements, b) State response to non-reporters, and c) State response to violations reported.

B. "Real Time" Reviews

In situations where the RO can review draft permits/enforcement actions (prior to issuance by the State) within the normal time frames for action, the RO may wish to use this approach. This should not be interpreted as a "veto" power over proposed permits; it is simply a mechanism for accomplishing overview when permit issuance time frames allow and when the State may benefit from EPA review prior to issuance. As an example, the process for issuing Class I hazardous waste well permits may allow time for such a review by EPA.

C. Inspection "audits" (joint inspections)

In addition to the file review discussed above, the RO may evaluate State compliance activity by accompanying State inspectors as they do their field work (routine inspections, witnessing MIT's, witnessing construction, etc.). The number of such "audits" to be conducted and coordination of schedules should be negotiated with the State in advance.

D. Attend public meetings

RO staff may attend public hearings or meetings on State permitting actions or rule changes to observe how well the State addresses public participation in its decision-making. RO staff may also attend meetings of State decision-making bodies (boards, commissions, etc.) to further witness the State's decision-making process.

E. Review reports

RO staff will also review program reports, such as the Class V Well Inventory/Assessment and the State's Annual program report.

The activities outlined above, along with frequent contact with the State on other issues, should give the RO staff (and the "program manager" in particular) a familiarity with, and knowledge of, the State program. This will allow the RO to provide frequent, informal feedback to the State on State performance, as well as formal program evaluations as outlined below.

V. State program evaluations

Prior to the start of the Fiscal Year, the RO should reach agreement with the State on the criteria and procedures to be used by the RO for overview of the State's program during the year. This agreement can be formal (e.g. an amendment to the delegation MOA), or included as part of the UIC grant application or in a separate document.

The RO should perform at least one on-site evaluation of each primacy State each year, preferably at mid-year of the grant period. A second evaluation, at end-of-year, is recommended if resources permit. The EPA State program manager should attend the evaluation conference, along with other EPA staff as appropriate. The evaluations should be coordinated with the EPA evaluation of ROs and the Office of Water operating guidance.

A. The evaluation conference has the following functions:

- (1) To evaluate the State's performance against commitments during the current budget period;

- (2) To identify any changes which should be made in the State's plan of work for the remainder of the budget period;
- (3) To provide EPA with "feedback" on what EPA's role should be for the remainder of the budget period and beyond;
- (4) To plan for the upcoming budget period; and
- (5) To inform the State of adequacy of reports and State variances with national averages.

Following the evaluation conference, the RO should draft an evaluation report regarding the State's performance. The State should have an opportunity to review this report before it is finalized. Copies of the final report should be sent to the State and Headquarters.

B. The RO should reference the following documents in evaluating the State's performance:

(1) Memorandum of Agreement (MOA)

The RO should assess whether the State has complied with the procedures and commitments set forth in the UIC delegation MOA.

(2) Program description

The RO should evaluate whether the State's program is being implemented as outlined in the UIC program description which was a part of the primacy application.

(3) State regulations

The RO should check to ensure that the State's actions are in accordance with the State UIC regulations.

(4) Grant award document and grant work plan

The RO should reference the budget and grant conditions of the UIC grant award document for the budget period in evaluating the State's performance. The RO should also compare the State's accomplishments with the program grant work plan for the budget period.

(5) EPA operating guidance and SPMS

The RO should compare State objectives with the national and Regional program priorities set by the EPA operating guidance and State activity targets identified in the SPMS.

(6) Prior evaluation reports

The RO should review the recommendations of prior evaluation reports to see if the State has implemented them.

(7) Enforcement agreement

The RO should compare State performance on compliance and enforcement with the State/EPA enforcement agreement (if applicable).

In addition, RO staff should draw on their experience from evaluating the UIC programs of other States and from running UIC programs directly in assessing the State's performance and making recommendations.

- C. The following areas may be reviewed by the RO during program evaluations. The RO should make sure that the areas reviewed correspond to the Program Elements defined in grants guidance (GWPG #28), and the "measures" contained in the Office of Water Accountability System. (The list that follows is only intended to be a "laundry list" and not a hierarchy classification.)

(1) Permitting Process

(a) Technical Quality of Permits/File Reviews

- Are technical judgments of good quality?
- Do construction and operation requirements conform with program description, State regulations, and MOA?
- Are aquifer exemptions requested and properly processed when necessary?

(b) Accomplishments vs. Projections

- Is permit reissuance file review proceeding on schedule (if applicable)?
- Are SPMS targets being met?

(c) Response to Comments

- How well does the State respond to public comments on proposed permits?
- Are public meetings/ hearings conducted in an appropriate manner?

(d) Exceptions

- If the State regulations allow exceptions to construction, operation or hearing requirements, have these been granted in such a way as to protect USDWs?

(2) Compliance Actions

(a) Overall approach

- Does the State have a well-defined approach to compliance?
- Does the State's approach follow EPA's UIC compliance strategy?

(b) Response to Complaints

(c) Accomplishments vs. Projections

- Were the projected number (or percentage) of witnessings of MITs, plugging, etc., accomplished?

(d) Review of Operator reports

- Did the State review operator reports and take appropriate action when necessary?

(e) Technical Actions

(3) Enforcement Actions

(a) Timeliness

- Were enforcement actions initiated quickly when warranted?
- Were Class IV wells closed and properly abandoned in a timely manner?

(b) Effectiveness

- Did the actions taken resolve the problem?

(c) Adequacy

- Were the actions taken appropriate?

(d) Emergency Response

- How well did the State respond to emergency situations?

(e) Federal Intervention

- Is it necessary or appropriate for EPA to become directly involved in enforcement action? (Guidance for Federal enforcement intervention in primacy UIC States is being issued in a separate document.) .

(4) Program Coordination

- (a) With other agencies involved in the State UIC program
- (b) With RCRA program staff at the State and/or Federal level
- (c) With Clean Water Act programs
- (d) With Superfund program

(5) Administrative Management

(a) Regulation Revision

- Did State revise regulations to follow an EPA regulation change?
- Did State inform EPA of proposed changes to State UIC regulations?

(b) Staff Training

- How well are new State UIC staff trained?
- Are all State UIC staff kept current with training on technical issues?

(c) Special Studies

- Were special studies or projects (where applicable) completed on time and with quality results?
- Is the Class V inventory/assessment proceeding on schedule?

(d) Grant-Related Issues

- Is the State's fiscal recordkeeping adequate?
- Is the State's property management system adequate for property purchased with grant funds?
- Are resources directed toward priority problems?

(e) Quality Assurance (QA)

- Did the State develop adequate QA plans for UIC activities?
- Are the QA program and project plans being implemented?

(f) Data Management

- How does State maintain all information?
- Does State maintain an updated well inventory system?
- Are State reports and inventory updates provided to EPA on time and of acceptable quality?

VI. Regional program evaluation

Headquarters may use the criteria and procedures outlined above to evaluate performance in non-primacy States and on Indian lands. As with State overview, Headquarters and the RO should agree in advance on the specific criteria and procedures to be followed in the overview process.

Implementation

The ROs should use this document to formulate more specific UIC Regional overview systems. Overview criteria should be discussed with each State prior to the start of each grant period.